

of the community. All the Christian members who spoke on my Bill have unanimously opposed it. Therefore I think it is better I withdraw it. It is only in deference to the sentiments expressed by the Christian members that I propose to withdraw my Bill. I seek the permission of the House to withdraw it.

The Bill was, by leave, withdrawn.

Mr. J. John Kattakayam : ഞാൻ എന്റെ ബില്ലു പിൻവലിക്കുന്നില്ല.

The question that Mr. Kattakayam's Bill be read in Council was put to vote and lost.

Mr. J. John Kattakayam : ഞാൻ ഒരു പോൾ ആവശ്യപ്പെടുന്നു

A poll was taken, and the House divided as follows :

AYES—2.

1 Mr. J. John Kattakayam | 2 Mr. E. I. Mathew

NOES—8.

1 Mr. V. S. Arumukham Pillai	5 Mr. Komilezhathu Sankaran
2 „ K. George	6 „ T. C. Tomman
3 „ C. M. Joseph	7 „ G. B. E. Truscott
4 „ Tariatu Kunjitomman	8 „ E. P. Varghese

NEUTRALS—14.

1 Mr. Kochikal P. Balakrishnan Tampi	8 Mr. N. K. Padmanabha Pillai (Director of Industries.)
2 „ H. O. L. Marikar	9 Mr. Kayalam Paramesvaran Pillai
3 „ G. Narayana Aiyar	10 „ M. N. Paramesvaran Pillai
4 „ K. P. Nilakanta Pillai	11 „ S. Piraviperumal Pillai
5 „ R. Nilakanta Pillai	12 „ R. Pitchu Aiyengar
6 „ K. Padmanabha Panicker	13 „ K. Rama Varma Raja
7 „ N. K. Padmanabha Pillai (Neyyattinkara)	14 „ K. Sankaralingom Pillai

The motion was declared lost, 2 voting *for*, 8 *against* and 14 remaining *neutral*.

THE TRAVANCORE LIMITATION REGULATION (AMENDMENT) BILL.

Mr. G. Narayana Aiyar : Sir, I beg to introduce a Bill to amend the Travancore Limitation Regulation VI of 1100.

Mr. E. P. Varghese : I second it.

Mr. Kayalam Paramesvaran Pillai : A member, when he introduces his Bill, has also to speak on the principles of the Bill.

Mr. G. Narayana Aiyar : The Travancore Limitation Regulation of 1100 has added, to the old Regulation a new Article, Article 120. That is an Article which did not find a place either in our Limitation Regulation, nor is there a corresponding Article in the British Indian Limitation Act. This Regulation of 1100 has also effected a slight change in another Article, Article 62 which corresponds to Article 60 of the old Regulation. It is these two Articles 62 and 120, that I now seek to amend.

These two Articles deal with periods of limitations for money transactions providing for re-payment in instalments. There is clear provision in the Limitation Regulation that in such transactions cause of action for recovery of instalment amounts arises immediately default is made in the payment of any instalment ; and that the right to recover the amounts due for such instalment is barred if no action is taken within 3 years after default is made if the bond is an unregistered one. This three years' rule applies only in the case of unregistered bonds. In regard to amount due on bonds charged on immovable property, the period of limitation is 12 years from the dates specified as instalments in the deed.

Bonds providing for instalment payment, generally also provide that, if the default is made in the payment of any one instalment, on demand by the obligee, the whole amount will be payable in a lump. The creditor thus will be entitled to recover the whole amount in a lump after the first default.

The Articles which were added in 1100, the Article which I said did not find a place in our old Regulation or in the British Indian Act, the Articles which form the subject-matter of my present Bill, enable the obligee, the creditor, even after sleeping over his rights till the last instalment falls due, till all the prior instalments get barred under the provisions of this Regulation itself, to claim the whole amount, including those which have been barred, by merely issuing a notice to the debtor at a later stage demanding all amounts. I shall illustrate my position. Let us take it that there is a debt of Rs. 100 repayable in 10 equal annual instalments. Let us also take it that an unregistered instalment bond has been executed for the same. Under the provisions of the Limitation Regulation, the first instalment will be barred in 1103 if it was due in 1100, the second instalment will be barred in 1104, and so on. As the provision now stands, the creditor can allow all the instalments to get barred by limitation, and then, in 1109, when before the last instalment is due, he can by simply issuing a notice to the debtor that he must pay the whole amount in a lump, claim the whole of it, including the instalments that have been clearly

barred by limitation under the provisions contained in the previous portions of these Articles.

Mr. Kayalam Paramesvaran Pillai : Does the member suggest that, according to the provision, which he now seeks to amend, barred debts can be revived ?

Mr. G. Narayana Aiyar : Yes, by taking shelter under the latter part of the provisions of Article 120 in case the debt is charged upon immovable property.

Mr. E. P. Varghese : Under Article 62 also.

Mr. G. Narayana Aiyar : Yes.

Article 120 says—

“To recover money or paddy due under a hypothecation bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due.

Twelve years.

The expiration of the first term of payment as to the part then payable ; and for the other parts, the expiration of the respective terms of payment ; but where after the default and on or before the date on which the last instalment is due the payee or obligee makes a demand in writing for the payment of the whole, and has not thereafter waived in writing his right to such payment, then from the date of such demand.”

It is therefore clear that the only thing that the obligee need do, to revive his barred rights with respect to instalments not paid by the obligor, is to issue a notice to the obligor before the last instalment is due demanding the whole amount due in a lump. He can simply issue such a notice and get over limitation. The provisions of these articles are inconsistent in themselves.

Sir, this is a mischievous provision ; and I dare say this was not contemplated by the legislature. The object of legislative enactments, especially the Limitation Regulation, is to set at rest controversies. The very object of the law of limitation is to discourage parties who sleep over their rights. It has to be remembered that public policy requires that stale claims should as far as possible be discouraged. It is also of cardinal importance for the progress of civilised society on healthy lines, that title should not be left in doubt and the un-settling of apparently settled claims should not be the order of the day. The aims and objects of the law of limitation are to set at rest doubts about title and liability as early as possible and in the administration of such law equitable considerations cannot be allowed to come into play. The provision

[Mr. G. Narayana Aiyar.]

that I now seek to amend if not allowed goes against the very spirit of the law of limitation.

The same is the case with Article 60 and 61 also. I therefore request the honourable members of the House to give permission for my Bill being read in the Council.

Mr. M. N. Paramesvaran Pillai: Sir, I also support the principle underlying this Bill. This Bill seeks to amend Articles 62 and 120 of the Limitation Regulation, VI of 1100. Article 62 corresponds to Article 61 of Regulation II of 1062 and Article 75 of the Indian Limitation Act, IX of 1908. But there is no provision either in our old Regulation or in the British Indian Act corresponding to Article 120. It is entirely a new one.

Mr. E. P. Varghese: In the British Indian Act, is there any provision corresponding to Article 62 of the present Regulation?

Mr. M. N. Paramesvaran Pillai: I have already said that Article 62 of our Regulation corresponds to Article 75 of the British Indian Act; but so far as Article 120 is concerned there is no corresponding provision in the British Indian Enactment.

The words "and on or before the date on which the last instalment is due" appearing in Article 62 have created some difficulty. These expressions do not find a place either in the old Article 61 or in the corresponding Article 75 of the Indian Limitation Act. Similar expressions are also used in Article 120. As Article 62 now stands, creditors can sleep over their rights for any length of time, provided they do not allow the last instalment due under the bond to be barred by limitation. Amounts that do really become barred under article 61 could therefore be saved from limitation if only the creditor chooses to take advantage of the provisions of Article 62 by making a demand in writing.

Mr. Kayalam Paramesvaran Pillai: How are the instalments barred?

Mr. M. N. Paramesvaran Pillai: Sir, I shall illustrate my position by a concrete example. Suppose A is the foreman of a chitty consisting of 20 instalments and B is a subscriber. B prizes his ticket at the first instalment and executes the chitty bond for the prize amount with a stipulation for the repayment of future subscriptions on the due dates. This is an instalment bond as contemplated by Article 61 of the Limitation Regulation. B makes default from the third instalment. Under Article 61 of the Limitation Regulation the period of limitation for the realisation of each

instalment begins from the respective dates of default. But Article 62 enables A to recover even barred instalments provided he makes a demand in writing before the last instalment becomes barred.

Mr. Kayalam Paramesvaran Pillai: Under which Article will the instalments be barred?

Mr. M. N. Paramesvaran Pillai: Under the previous Article *viz.*, Article 61.

Mr. Kayalam Paramesvaran Pillai: Why should the previous Article be applied?

Mr. M. N. Paramesvaran Pillai: Sir, I have read Articles 61 and 62. A comparison of the provisions of these two Articles will make the position clear.

Article 61 reads thus :—

“On a promissory note or bond payable by instalments. Three years.	The expiration of the first term of payment as to the part then payable; and for the other parts the expiration of the respective terms of payment.
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Article 62 reads thus :

On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due. Three years.	Same as above : but where, after the default and on or before the date on which the last instalment is due, the payee or obligee makes a demand in writing for the payment of the whole, and has not thereafter waived in writing his right to such payment, then from the date of such demand.
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Article 61 lays down that a suit on a promissory note or bond payable by instalments should be instituted within 3 years from the expiration of the first term of payment as to the part then payable; and for the other parts the expiration of the respective terms of payment. Under Article 62, which also applies to suits on promissory notes or bonds payable by instalments the period of limitation is the same as in Article 61. The difference between the two Articles being that under the provisions of the latter Article, even barred debts could also be recovered provided a demand in writing be made before the last instalment is barred. Hence, as I stated in the beginning, the creditors can sleep over their rights. Article 62 makes the debtors indifferent in the matter of repayment of debts and the creditors from being vigilant about their rights. It may be contended that pleas resting on limitation encourage the perversion of justice as very often truth is thereby sacrificed. No doubt honest persons may sometimes suffer loss by reason of this law, but it is nevertheless expedient that the general good of the community

[Mr. M. N. Paramesvaran Pillai.]

should be purchased at the expense of some individual hardship. The principle is that the law assists the vigilant and not those who sleep over their rights. *Vigilantibus, non dormientibus jura subveniunt.* The object of the law of limitation being the promotion of the public weal it should conduce to the peace and prosperity of the State by refusing to keep alive stale claims without hindrance. Security of property will be perpetually endangered if rights are incapable of being settled and regulated within reasonable periods. That is why those who seek the aid of courts are required to be vigilant and to be bound by rules and principles. The rules of limitation, like the rules of resjudicata, lispendens and estoppel have been devised for the protection of the vigilant and the wary against the inertia and apathy of their rivals. A careful study of these rules will enable us to realise that the statute of limitation is not a collection of arbitrary assumptions, but is an edifice founded on intelligible and rational hypothesis. In all countries, in the beginning, when the people were mostly ignorant and suit could be carried on except at great sacrifice of time and money, larger periods of limitation were being allowed; but as knowledge is diffused and the administration of justice becomes regular and pure, the periods of limitation are safely abridged. It is quite in keeping with the development of law that these amendments are proposed.

Sir, we have been discussing the report of the Agricultural Debt Redemption Committee. That Committee, after a careful study of the situation of the debtors in the country, has recorded its opinion that the ruin of our agriculturists has been mainly due to the present chitty system. According to the Committee, chitties are harmful and ruinous to agriculturists. When we are contemplating phenomenal changes for the economic improvement of the agriculturists it will only be in the fitness of things that we should annihilate all chances of accumulation of debts and interests. It is in connection with the chitty transactions that instalment bonds are generally executed. I would, therefore strongly support the principle of this Bill.

Mr. Kayalam Paramesvaran Pillai: Sir, I oppose the Bill. It will be seen, from the observations so far made on the Bill now before the House, that the general purport of it is to defeat payment of money that is really due. No doubt, the law of limitation always defeats rights really belonging to a person, for the mere reason that he did not exercise the right within a prescribed time-limit. But the question now before the House is whether such a means of defeating should be extended further, whether a party who has been given, by the Regulation of 1100, some right,

should be deprived of such right now. The House must be satisfied before it gives its assent to the Bill, that it is justified in depriving a party of that right.

Mr. M. N. Paramesvaran Pillai: If we are going to be interested so much in the creditor, then why not make similar provisions for all matters governed by the Limitation Regulation? Why should we restrict it to the holders of instalment bonds alone?

Mr. Kayalam Paramesvaran Pillai: Sir, that question would arise only when the entire field of the Limitation Law is before us for amendment. Now, there is only one provision; and the object of that provision is to defeat claims really due.

Mr. E. P. Varghese: Is that not the general trend of the Limitation Regulation?

Mr. Kayalam Paramesvaran Pillai: It is; I have already stated that. But the question that the House has to consider now is whether it is right to extend such means of defeating by curtailing the limitation period once fixed.

Sir, the only argument advanced in support of the Bill is that Articles 62 and 120 of the present Regulation enable a creditor to revive debts barred by limitation. Sir, I question that they are barred. Under what Article are they barred? They are barred under other Articles on the assumption that it is these articles that apply. But if the Articles 62 and 120 apply, will the debts be barred? Admittedly no.

Mr. E. P. Varghese: Is it not against principles of jurisprudence to allow barred debts to be revived?

Mr. Kayalam Paramesvaran Pillai: I do not propose to answer that question because we are not at that large question now. I am saying that there is no question of any barred debts being revived.

It seems to me, Sir, that there is some confusion of ideas on the part of the honourable members in regard to the ground on which the principle of the Bill is sought to be supported. For the ground is that the claim is barred. Claimed under what Article? Admittedly under some *other* Article. Sir, this is the confusion. When we try to apply Article 120, we must apply it and none else. Sir, the Limitation Regulation provides different Articles for the various descriptions of suits. We have to apply the appropriate Article for each description of suit. If we examine the Schedule to the Regulation we find 4 columns. The first column gives us the number of the Article, the second column gives the description of the suit, the third the period of limitation, and the fourth the time from which such period begins to run. Therefore, when we are

[Mr Kayalam Parameswaran Pillai.]

considering one kind of suit we should refer to the appropriate Article i. e., the Article which applies to that kind of suit, and not to any other Article.

This is what Article 120 gives: --

"To recover money or paddy due under hypothecation bond payable by instalments, which provides that, if default be made in payment of one or more instalments, the whole shall be due. Twelve years.

The expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment; but where after the default and on or before the date on which the last instalment is due the payee or obligee makes demand in writing for the payment of the whole and has not thereafter waived in writing his right to such payment, then from the date of such demand.

Article 119 has been referred to by the mover. That Article says:--

"To recover money or paddy due under a hypothecation bond or to enforce payment of money or customary dues charged upon immovable property Twelve years.

"When the money or paddy sued for becomes due."

Explanation: The allowance and fees respectively called.....shall, for the purpose of this Article be deemed to be money charged upon immovable property."

It is therefore clearly a confusion of ideas to say that suits barred under Article 119 are sought to be revived under Article 120.

Mr. E. P. Varghese: May I ask whether by the omission of the words 'demand in writing'—in Article 120, the object of the mover of the Bill cannot be achieved?

Mr. Kayalam Parameswaran Pillai: Article 120 applies only to suits on documents which provide that, where money has to be repaid in instalments, if any of the instalments is not paid on the due date, the creditor will be entitled to demand the whole amount in a lump.

Mr. G. Narayana Aiyar: I admit that my reference to Article 119 is not correct.

Mr. Kayalam Parameswaran Pillai: Then under which Article are the instalments barred? To say that any portion of the claim is barred under any article other than Article 120 is not correct. That is what I want to stress. If you argue that Article 120 revives any barred claim, you must be able to show that the Article you rely upon applies to the very same description of suits to which Article 120 applies. Otherwise the argument must fall to the ground.

Mr. M. N. Paramesvaran Pillai: May I ask whether according to column 3 of Article 61, the period of limitation for any instalment does not begin from the date of default of such instalment?

Mr. Kayalam Paramesvaran Pillai: But it is Article 62 that applies to a bond which provides that if default be made in payment of one or more instalments the whole shall be due. Therefore it is Article 62 and not any other Article that should be applied to such cases. You must apply the appropriate Article. The only question now is whether a right which the Legislature gave to the creditor about 10 years ago should now be taken away from him.

Mr. M. N. Paramesvaran Pillai: In spite of what the Legislature has laid down with respect to the rates of interest, are we not now thinking of reducing the rates of interest?

Mr. Kayalam Paramesvaran Pillai: Yes. True, but that is on a specific reason. It is for the House to consider whether, in this matter, there has been any such reason like unforeseen and extraordinary world-wide phenomenon. My point is that the object of this Bill is to defeat the creditor of his legitimate right, a right which the Legislature gave him a decade ago.

Mr. M. N. Paramesvaran Pillai: Why should the creditor who has slept over his rights, be helped?

Mr. Kayalam Paramesvaran Pillai: The Legislature allows him to sleep over his right till the date of the last instalment.

Mr. Paramesvaran Pillai suggests apparently that even as we now propose to interfere in the case of agricultural indebtedness we must interfere in this instance also. One is due to events beyond the control of any human being and for that reason we are thinking of reducing the interest. But has there been any event like that in the present instance? What has happened? In the case of the Jenmi Kudiyan Regulation, for instance, in regard to the recovery of arrears of jenmies due, we have cut down the period from 12 years to 6 years. We had some specific reasons for doing so. The reason was that there was a complaint that the jenmies are leaving the dues to accumulate making it difficult for kudiyan to pay in a lump and easy for the jenmi to harass the kudiyan. If the House is convinced that in the present case also, there are such or similar reasons why the creditor should be deprived of his once recognised right the House can approve of this Bill.

Mr. M. N. Paramesvaran Pillai: Will this also not be a relief to the debtor.

Mr. Kayalam Paramesvaran Pillai: If that is really our object, we can as well cut down the period of limitation in respect of all money transactions, the promissory notes, bonds and so on,

Mr. E. P. Varghese : May I ask whether even after the first instalment has become due something like 14 years ago, the creditor is not now at liberty to sue for the whole amount just when the last instalment falls due ?

Mr. Kayalam Paramesvaran Pillai : Yes, if the Article now sought to be amended is applied.

Mr. M. Govindan : May I know whether it is equitable to allow a longer term for claiming the whole amount in a lump, when the creditor had agreed to receive the money in instalments ?

Mr. Kayalam Paramesvaran Pillai : Yes.

Mr. M. N. Paramesvaran Pillai : May I ask whether this does not work as a great hardship to chitty subscribers ?

Mr. Kayalam Paramesvaran Pillai : I do not admit it.

Mr. K. P. Nilakanta Pillai : Is it not the same case with the chitty foreman also ?

Mr. Kayalam Paramesvaran Pillai : I don't think so. Anyway we have not heard any such complaint against the present provision. Even the mover of the Bill did not say that there have been complaints.

Mr. V. S. Arumukham Pillai : May I ask whether the foreman is giving a concession to the subscriber by not claiming the instalment as they fall due ?

Mr. Kayalam Paramesvaran Pillai : No. In the case of the Jenmi Kudiyan Regulation there was a definite complaint from the kudiyan that his liabilities were being allowed to accumulate and that the jenmies were thereby trying to ruin the kudiyan.

Mr. M. N. Paramesvaran Pillai : Under the chitty bond if the first instalment is defaulted the subscriber will have to pay the whole in a lump if a suit is filed against him. Is it not a burden on the debtor ?

Mr. Kayalam Paramesvaran Pillai : It may be viewed like that.

Mr. M. N. Paramesvaran Pillai : Under the old Regulation longer periods were allowed. They have been cut down. This article effects further cuts.

Mr. Kayalam Paramesvaran Pillai : In that case let us amend all the Articles in the Regulation ? Why should we amend isolated Articles ?

Mr. M. N. Paramesvaran Pillai : May I inform that Mr. Narayana Aiyar does not want to give retrospective effect ? He only wants the creditor to be vigilant.

Mr. Kayalam Paramesvaran Pillai: Why not the debtor be given time?

Mr. Sankaralingam Pillai (*Kottarakara and Pathanapuram cum Shencottah*): Is it not advantageous to the debtor to see that his debts are not allowed to accumulate?

Mr. Kayalam Paramesvaran Pillai: May be. But we should not defeat another man of his legitimate rights? Sir, I oppose the Bill.

Mr. E. P. Varghese: In support of the Bill I wish to speak a few words. Although I have listened to the learned and subtle arguments of the Law Member I think the wording of the Article 62 is not appropriate. The whole trouble has been created by bringing in the words "on demand in writing". We do not find these words in the British Indian Act. The learned Chief Justice Raman Menon in 32 T. L. R. said as follows:—

"When the subscriber makes a default in the punctual payment of any one instalment the primary contract is broken and in its place there arises by virtue of the contract another obligation which is to pay the future instalments in a lump. This is the only obligation that subsists after default as is clear from the fact that that alone is capable of being discharged by tender. And the obligation is to pay the money at once and without any demand either written or verbal. On a careful and anxious consideration of the whole matter, I feel I cannot accept the opinion given in XXV T. L. R. 142."

Mr. Kayalam Paramesvaran Pillai: Was not that observation made before the present Regulation?

Mr. E. P. Varghese: Yes.

Mr. Kayalam Paramesvaran Pillai: Was it not overruled in a recent case?

Mr. E. P. Varghese: Yes, it might have been.

Mr. Kayalam Paramesvaran Pillai: Has it not been over-ruled very recently?

Mr. E. P. Varghese: Yes, it cannot but be since this Regulation came into force.

But what I am submitting is that it is wrong on principle to have the words "on demand in writing." This dictum enunciated by Mr. Raman Menon, Chief Justice, is based again on the leading case in English law *Hemp vs. Garland*. When a person makes default in payment under an instalment bond, there arises the obligation to pay the whole amount in a lump. No demand in writing is required. He is bound to pay the whole amount in a lump as is stated in the bond.

Mr. M. Govindan: Will the member please inform the facts of that English case cited?

Mr. E. P. Varghese: The facts are not contained in this book. I cited on the authority of no less a person than the learned

[Mr. E. P. Varghese.]

Chief Justice Mr. Raman Menon. What I am submitting is that within a period of 12 years of the default he has to sue according to the law, without the words "on demand in writing." By bringing the words "on demand in writing" we have created this trouble and difficulty which the mover of the Bill is trying to get over by his amendment Bill. The learned Law Member said that the object of the provision is to extend the period of limitation. It is well and good to extend. But should there not be a limit? Why should it be allowed to go on for a number of years?

Mr. M. Govindan: What harm is there?

Mr. E. P. Varghese: In that case why not we abolish the whole law of limitation?

Mr. M. Govindan: Where is the harm in abolishing the whole law of limitation?

Mr. E. P. Varghese: There is harm. The principle on which the law of limitation is based and enacted is the answer for that.

Mr. Komilezhathu Sankaran: Who is benefitted by the law of limitation? Is it the debtor or the creditor?

Mr. E. P. Varghese: It is the creditor as well as the debtor that is benefitted.

The law of limitation is based on certain principles. In consonance with that to say that after 12 years by a simple device we can revive the barred debt is unsound.

Mr. V. S. Arumukham Pillai: Under the Section as it is, cannot the whole debt even now be revived?

Mr. E. P. Varghese: If the last instalment alone is not barred we can revive the whole debt by a demand in writing and that is the difficulty which has been created by the words 'on demand in writing'. They are not found in the British Indian Code.

Mr. M. Govindan: On demand in writing is a clear expression. Where is the difficulty?

Mr. E. P. Varghese: Even long after one instalment is barred, it can be revived by a demand in writing. That is the difficulty or rather the unsoundness.

Mr. Komilezhathu Sankaran: But should we not give sufficient time to the debtor?

Mr. E. P. Varghese: The debtor should be given sufficient time but it should not be made to extend for any number of years.

Mr. Komilezhathu Sankaran: Supposing we are going to reduce the period of limitation. Then will not the creditor remain quiet until the period is about to expire and thereafter be running to the court?

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Mr. E. P. Varghese : He may. But the debtor cannot remain without knowing what he has to pay.

Mr. M. Govindan : May I know from the member whether this amendment is intended to help the creditor or the debtor?

Mr. E. P. Varghese : In some respects it may be a help to the debtor and in some respects it may be a help to the creditor.

Mr. V. S. Arumukham Pillai : May I know how it will be helpful to the debtor?

Mr. E. P. Varghese : The debtor will be benefitted. Suppose the debt is barred; he need not pay. Again, the debts will not be allowed to accumulate if the period of limitation is short.

Mr. M. Govindan : And if it is made shorter than 12 years, will it not be more beneficial to the debtor?

Mr. E. P. Varghese : Yes, it will be some times. But then I do not think when the Legislature brought this into effect this difficulty was contemplated by them. Section 120 says:—

"120. To recover money or paddy due under a hypothecation bond, payable by instalments which provides that, if default be made in payment of one or more instalments, the whole shall be due.

Twelve years.

The expiration of the first term of payment as to the part then payable and for the other parts, the expiration of the respective terms of payment. But where after the default and on or before the date on which the last instalment is due, the payee or obligee makes a demand in writing for the payment of the whole and has not thereafter waived in writing his right to such payment then from the date of such demand."

That shows that certain debts which would be barred under the first clause of that schedule will be revived by making a demand in writing as provided for in the schedule.

So, Sir, I support the Bill of Mr. Narayana Aiyar.

Mr. K. P. Nilakanta Pillai : Sir, I also support the principle of the Bill introduced by Mr. G. Narayana Aiyar. The learned Law Member's arguments in opposing the Bill were one-sided. Sir, if the Bill be disadvantageous to the creditors on the one side, it will also be disadvantageous to the debtors on the other side. Therefore, it is not a Bill as apprehended by the Law Member which proposes to take away the right or privileges of one party or the other.

[Mr. K. P. Nilakanta Pillai.]

The learned Law Member was arguing—probably that was the best of his argument against this measure—that the debtor under the existing provision is given a longer period of time to pay off his debt. We know, as a matter of fact, that it is this non-business-like tendency which is infused into the public by such pieces of legislation that has landed the prosperity of the country in a very bad port. We know the debtor is always a debtor and therefore it will always be his aim to postpone payment to the creditor. He will try to resort to any measure whereby he can postpone payment especially in these times when we are in difficulties. Therefore, Sir, the argument of the Law Member is ruinous more to the creditor than to the debtor. On the other hand if the proposed amendment were accepted it will be in the interest of the creditor. It is open to the creditor to go to the court earlier because the period of limitation is made shorter. Nothing prevents him from doing so. Therefore if the debtor who has made a default finds that the creditor is likely to go to court within a short time, he will be more vigilant to pay off the debt and to see that the costs which may be decreed by the court are avoided. Therefore the amendment would be indirectly to the benefit of the debtor than to the creditor. Moreover by accepting this amendment, the creditor is not going to be seriously affected in any way.

The Law Member was asking why we should introduce this legislation in the absence of a keen necessity felt. There is keen necessity felt and that is the reason why we have sought to introduce this Bill in this House. Let us consider how this Bill is prejudicial to any party. The Bill does not give retrospective effect to any transaction. It is intended only for future transactions. Hereafter a debtor or a creditor may know what exactly the contract between each other is and where they stand according to the Regulation. Therefore it is not in anyway going against the interests of the debtor or creditor. On the other hand it will be advantageous to the public at large.

Sir, the learned Law Member is also a very experienced lawyer on the official side. He must be taken to know what exactly is the trend of the contention in all chitty suits that come before courts. It is more or less a race between parties. In every plaint it is the allegation that the defendant was a subscriber to the chitty conducted by the plaintiff, that he paid only 3 or 4 instalments, that thereafter he defaulted and that plaintiff is entitled to recover future subscriptions in a lump. On the other hand it is the contention of the debtor in his written statement that as a matter of fact there was no default, that he made payment or offered payment but the

THE TRAVANCORE LIMITATION REGULATION (AMENDMENT) BILL, 293

creditor refused to accept because on account of this provision under which he can realise in a lump. The foreman takes shelter under this provision and under the general provision which is common feature of all chitty hypothecation bonds whereby when a single instalment is defaulted the foreman can sue for realising the lump sum in one suit.

Mr. V. S. Arumukham Pillai : Does the member suggest that the right of the foreman to realise the whole amount in a lump on the date of the default should be taken away by this legislation ?

Mr. K. P. Nilakanta Pillai : The simple answer is this. If the chitty foreman had not correctly understood what the view of the Legislature on this particular matter is, they would not have introduced this penalty clause in the chitty hypothecation bonds. The provision of law which is now proposed to be amended is as a matter of fact written in every chitty *kaikanakku* or is embodied in the rules, and in the chitty hypothecation bonds also the penal provision is entered. The foreman knows on account of this provision limitation can be got over and on account of the penal provision which is quoted in the *kaikanakku* and the hypothecation bond his position is very safe and whenever it is convenient for him he can go to the court.

Now let us suppose the chitty instalment is Rs. 100. If the subscriber is unable to pay Rs. 100, how is it possible for him to pay Rs. 2,000 or Rs. 3,000 in a lump ? Therefore it is more disadvantageous to the debtor and if it is advantageous to the debtor it is taken away and we know exactly in what position the debtors and chitty subscribers are now placed. It is not because they have plenty of money they subscribe for chitties but they join chitties to meet some emergent expense by bidding the chitty or to pay some previous debt or for some other purpose. Therefore the proposed measure is very advantageous to the debtor and it is not in any way disadvantageous to the creditor. Therefore I have great pleasure to support this measure brought forward by Mr. G. Narayana Aiyar.

Mr. Kochickal P. Balakrishnan Tampi : Sir, I rise to oppose the measure. After the very persuasive speech of the Law Member I am inclined to believe that it is an ill-wind that blows nobody good. It is idle to pretend that a debtor does not pay off his debts simply because the period of limitation is pretty long. And it is also idle to pretend that the debtor will become more vigilant if the period of limitation is cut down. I am reminded of a story in which a guardian wrote to a schoolmistress saying "My child is very nervous ; therefore do not beat him. Whenever

[Mr. Kochickal P. Balakrishnan Tampi.]

he grows naughty, please beat the boy sitting next to him. That will improve him." That way of improving one's child is not evidently the best way of doing things. In the same way in order to make the debtor more vigilant, to take off the right of the creditor is a very hard thing. And I am also inclined to believe that the debtors also in this period of distress will not thank the mover of the Bill for the measure thus introduced in this House because at any cost the creditor will be forced to go to the Law court and demand the whole sum with interest from the date of demand. My friend Mr. Paramesvaran Pillai was not correct when he said that according to the present rulings interest can be calculated only from the date of default.

Mr. M. N. Paramesvaran Pillai: Does that ruling apply to chitty hypothecation bonds as well?

Mr. Kochickal P. Balakrishnan Tampi: Yes.

Mr. M. N. Paramesvaran Pillai: May I know what that ruling is?

Mr. Kochickal P. Balakrishnan Tampi: I have not brought my library with me.

I oppose the measure, and, in doing so, I appeal to the non-official members of the House not to be much too generous in the matter of passing legislation. This is a matter in which we have got to safeguard the interests of the people, both creditors and debtors. It is our duty to see that no interests are unduly tampered with by any legislation especially by this Council of Elders.

Mr. K. P. Nilakanta Pillai: May I ask whose interest is adversely affected by this legislation?

Mr. Kochickal P. Balakrishnan Tampi: That of creditors and debtors.

Mr. V. S. Arumukham Pillai: Sir, I rise to oppose the Bill. Mr. Nilakanta Pillai was dealing with chitties. It has been my bitter experience that chitty foremen are very avaricious.

Mr. E. P. Varghese: May I know whether the honourable member is a chitty foreman?

Mr. V. S. Arumukham Pillai: I belong to the profession to which the honourable member belongs.

Mr. Kayalam Paramesvaran Pillai: Sir, I must mention that it is not in proper form to ask a member questions about personal qualifications.

Mr. V. S. Arumukham Pillai: A chitty foreman has got the right under the *Varigola* to realise the money in a lump from the date of demand. If he does not file a suit, it is

because he is generous and because he gives some concession to the debtor. But by this amendment he is not in a position to give any such concession. We have to see whether this amendment improves the position of the debtor in anyway. The honourable mover as well as the supporters of the amendment—

Mr. M. N. Paramesvaran Pillai : Does not the present provision penalise a man who makes a demand and does not issue a notice ?

Mr. V. S. Arumukham Pillai : If he does not file a suit within the time, he cannot realise this amount. Even if he has made a demand he ought to file a suit before it is time-barred.

Mr. M. N. Paramesvaran Pillai : Does not the member know that he ought to go within three years, otherwise he cannot avail himself of the provisions of law ?

Mr. V. S. Arumukham Pillai : I do not think he has got three years' time. There is time-bar to every suit.

Mr. M. N. Paramesvaran Pillai : My point is with regard to future instalments which the debtor has to pay. If the creditor makes a demand, are not all the demands barred under the present Bill ?

Mr. V. S. Arumukham Pillai : My friend is confusing the right to demand in a lump sum with the right to demand in instalments. In the latter case if he demands an instalment this question does not arise at all. I am dealing with the question of demand where it is made compulsory for realising the amount in a lump.

Mr. M. N. Paramesvaran Pillai : If there are ten instalments, and a demand is made, do not subsequent instalments also become time-barred under the Bill ?

Mr. V. S. Arumukham Pillai : My friend is confusing. Is it for the defaulted instalments or the whole sum that the demand is made ?

Mr. M. N. Paramesvaran Pillai : If a debtor makes a demand for a defaulted amount should he not make a demand for the entire amount ?

Mr. V. S. Arumukham Pillai : If the creditor makes a demand for the defaulted sum alone he can sue for that only. If subsequently another default is made he can send a notice demanding the whole amount and file a suit for future instalments also.

My argument is that the present amendment does not in any way benefit the debtor. For the last two days we have been discussing the report of the Agricultural Debt Redemption Committee

[Mr. V. S. Arumukham Pillai]

and advocating the cause of the debtors. We have been suggesting that the debtors must be given as much time as possible to pay the money in long instalments covering 20 or 25 years. It is therefore not proper now to penalise the debtors who are to pay the instalments by cutting short the period within which they have to pay. For these reasons, I oppose the Bill.

Mr. G. Narayana Aiyar : Sir, after hearing the learned Law member and others who spoke against the motion, I am not satisfied that the motion before the House is unnecessary. One or two points which the Law member raised I will reply to. He said that there is no complaint from anybody that it is a burden to them. It may not be out of place to say that I am not a chitty starter or anything like that. I may also say that I am a Vakil practising in original courts. There is no fixed method of settling such controversies. In practice it is found some Munsiffs say even though notice is issued as per the provisions of these articles that the suits are timebarred so far as earlier amounts are concerned. Others say that the suits are not barred. Had it not been for such serious differences in courts, and the insecure position of debtors and creditors I would not have brought up this Bill. There is a lot of complaint also about the present Regulation.

As regards moral duty, I admit that the debtor is bound to pay his debts. But I doubt whether moral duty and legal enactments would go side by side. At least for the future, the amendment should be allowed. I press the Bill.

Mr. E. P. Varghese : What was the law before?

Mr. G. Narayana Aiyar : Practically the same difficulties were there, but was not so bad.

The question that the Travancore Limitation Regulation (Amendment) Bill be read in Council was then put and carried.

Mr. Kayalam Paramesvaran Pillai : I demand a poll. A poll was taken with the following result :

AYES—16

1 Mr. John Kattakayam	9 Mr. K. Padmanabha Panickar
2 „ C. M. Joseph	10 „ N. K. Padmanabha Pillai
3 „ K. N. Kesavan Nampu-	(Neyyattinkara)
tiripad	11 „ M. N. Paramesvaran
	Pillai
4 „ Tariatu Kunjitomman	12 „ S. Piraviperumal Pillai
5 „ K. Madhavan Pillai	13 „ K. Rama Varma Raja
6 „ G. Narayana Aiyar	14 „ K. Sankaralingam Pillai
7 „ M. N. Narayana Menon	15 „ E. P. Varghese
8 „ K. P. Nilakanta Pillai	16 „ A. N. Visvanatha Pillai

NOES—16

- | | |
|---------------------------------------|--|
| 1 Mr. S. Adam Sait | 9 Mr. R. Nilakanta Pillai |
| 2 „ V. S. Arumukham Pillai | 10 „ N. K. Padmanabha Pillai
(Director of Industries) |
| 3 „ Kochikal P. Balakrishnan
Tampi | 11 „ Kayalam Paramesvaran
Pillai. |
| 4 „ K. George | 12 „ R. Pitchu Aiyangar |
| 5 „ M. Govindan | 13 „ Komilezhathu Sankaran |
| 6 „ C. O. Madhavan | 14 „ James Simpson |
| 7 „ H. O. L. Marikar | 15 „ T. C. Thomman |
| 8 „ E. I. Mathew | 16 „ G. B. E. Truscott |

Chairman : Since the votes are equal, I have to use my casting vote. I vote against the introduction of the Bill.

The motion was declared lost.

THE CODE OF CIVIL PROCEDURE, REGULATION
VIII OF 1100 (AMENDMENT) BILL.

Mr. G. Narayana Aiyar : I do not move the Bill just now.

THE TRAVANCORE TRANSFERS AND BEQUESTS
TO UNBORN PERSONS BILL.

Mr. G. Naryana Aiyar : Sir, I beg leave to introduce the Travancore Transfers and Bequests to Unborn Persons Bill.

Mr. Kochikal P. Balakrishnan Tampi : I second it.
Leave was granted.

RESOLUTIONS ON MATTERS OF GENERAL
PUBLIC INTEREST.

The following resolution was not moved—

MR. E. P. VARGHESE : This Council recommends to the Government that the selection of policemen made by the present acting Police Commissioner on 7-2-1111 be cancelled.

ABOLITION OF THE DEVICOLAM DIVISION.

This Council recommends to the Government that the Devicolam Division be abolished and amalgamated with the Kottayam Division.

Mr. J. John Kattakayam : സർ, ദേവികളം ഡിവിഷൻ നിർത്തൽ ചെയ്ത് അതിനെ കോട്ടയം ഡിവിഷനോടു ചേർക്കണമെന്നുള്ള പ്രമേയത്തെ ഞാൻ ഇവിടെ അവതരിപ്പിച്ചുകൊള്ളുന്നു.

പത്തനാമുപുരം തിരുവനന്തപുരം എന്നീ ഡിവിഷനുകൾ ഉണ്ടായിരുന്നതു സമീപകാലത്തു നിർത്തൽ ചെയ്ത് ഒന്നാക്കി. ആ സ്ഥിതിക്കു ദേവികളം പീരുമേട് ഈ രണ്ടു താലൂക്കുകൾക്കുവേണ്ടി ഒരു പ്രത്യേക ഡിവിഷൻ ആവശ്യമുണ്ടോ എന്നു ഈ അവസരത്തിൽ ചിന്തിക്കേണ്ടതാണ്. ജനസംഖ്യനോക്കിയാൽ ഈ ഡിവിഷനിൽ തിരുവിതാംകൂറു